



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	01/31/00	Bill No:	AB 809
Tax:	Smog Impact Fee	Author:	Lowenthal, et al.
Board Position:		Related Bills:	AB 1702, AB 1726, SB 215, SB 230, SB 1325

BILL SUMMARY:

This bill would establish a refund program for the vehicle smog impact fee collected by the Department of Motor Vehicles (DMV) which has been determined to be unconstitutional.

ANALYSIS:

Current Law:

Under Chapter 3.3 (commencing with Section 6261) of the Revenue and Taxation Code a vehicle smog impact fee of \$300 is imposed when a motor vehicle is registered in California if it was last registered outside the state and the vehicle was not certified to meet California's emission standards.

Proposed Law:

This bill would add Section 1673 to the Vehicle Code to require the DMV to do the following:

1. Search its records to identify all persons who paid the smog impact fee since October 1, 1990.
2. Mail each of those persons a refund notification form, as specified.
3. Provide a refund of \$300, plus any penalty fee collected, to each person who returns the form to DMV, as specified.
4. Calculate interest on the amount refunded equal to the interest that would have accrued using the rate for the Pooled Money Account (currently 5.761 percent) from the date the fee was paid to either, (a) the date DMV makes the refund, or (b) the 90th day after DMV mails the refund notification form, whichever is earlier.
5. Deposit any refund made that is returned due to an incorrect mailing address in the Smog Impact Fee Refund Escrow Account until DMV is able to locate the recipient or after one year from the date all refunds are made.

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The bill would also do the following:

1. Establish a one-year period of time with which persons who paid the fee could return the refund notification form for a refund, as specified, or, in cases where the statute of limitations under Section 6902 has more than one year remaining, allow the refund notification form to be returned within the time period established therein.
2. Specify that DMV may expend not more than \$11 million to mail the refund notification forms.
3. Become operative only if SB 215 is enacted and transfers funds from the General Fund to the Smog Impact Fee Refund Account.

Background:

The \$300 vehicle smog impact fee was added by AB 1109 and AB 2561 (Stats. 1990, Chs. 453 and 1362, respectively) and became operative October 1, 1990. In 1994, several new residents of California believed it was unfair that they were charged a \$300 Smog Impact Fee in order to register their vehicles in the State, when existing residents did not have to pay \$300 to register their vehicles. After filing claims for refund, and being denied by both the Board and the DMV, these residents filed a lawsuit against the State of California seeking refunds, plus interest. On October 1, 1999, the Third District Court of Appeal declared this fee to be unconstitutional under the Commerce Clause of the United States Constitution since it discriminated against interstate commerce by a practice effectively similar to imposing license fees and use taxes with respect to vehicles sold outside California which later entered the state that were higher than the fees and taxes imposed with respect to vehicles sold inside California. On October 19, 1999, Governor Gray Davis directed the DMV to temporarily stop collecting the fee pending his decision on whether to appeal the Third District Court of Appeal's ruling. On November 10, 1999, the Governor announced that he decided not to appeal the case, and requested DMV to come up with a workable plan to present to the Legislature to return this money.

Information obtained from DMV indicates that 1,675,761 vehicles have been subject to the fee since its inception.

During the 1999 Legislative Session, three bills to address this issue were also introduced. Assembly Bill 1311 (Ashburn) and AB 1560 (Aanestad) were identical, and declared the intent of the Legislature that the statute imposing the smog impact fee would be repealed if those provisions were held to be unconstitutional. These measures would have also required DMV to develop and implement a program to refund the fee to any person who had paid the fee if the statute is repealed. The provisions of both of these measures were amended out in the Assembly Transportation Committee. Another measure, SB 230 (Johannesen) would repeal the smog impact fee provisions contained in the Sales and

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Use Tax Law. On January 31, 2000, that measure passed the Senate Appropriations Committee and will now proceed to the Assembly.

COMMENTS:

1. **Sponsor and purpose.** This measure is intended to initiate a plan to return the vehicle smog impact fee to the persons who paid the fee and request a refund. The author is currently the sponsor.
2. **The January 31, 2000 amendments add an urgency clause.** In order to provide the public a refund of the smog impact fee as soon as possible, the January 31 amendments incorporate an urgency clause so that the bill's provisions become operative immediately.
3. **Other measures have been introduced this session that would also address this issue.** As of the date of this analysis, four other measures have been introduced this session to provide a plan to return the illegally collected fees to the fee payers. AB 1702 (McClintock) and AB 1726 (Reyes) are identical, and would require DMV to immediately issue a refund of the fee, including any penalty paid, together with interest at the rate the Board charges for delinquent sales and use tax payments (currently 11 percent). The refund would be available to all persons who paid the fee since October 1, 1990 and would not require individuals to file claims for refund. Both measures would appropriate \$767 million from the General Fund for purposes of making the refunds.

The third measure, SB 1325 (Karnette and Dunn), would create a general procedure for the refund of any tax or fee levied by either the state, county, or any political subdivision that has been determined to be unconstitutional. SB 1325 would, among other things, require the Board to notify all persons that paid the unconstitutional tax or fee of their right to a refund within 90 days of the date the court decision becomes final. It would require persons to file claims for refund and would require that such claims indicate the approximate date upon which, and place at which, the tax or fee was paid. SB 1325 would require any agency possessing revenues from the unconstitutional tax or fee to transfer those revenues to the Board, and would require the Board to deposit those funds in a segregated impound account established by the Board. Under SB 1325, the Board would be required to process the claims for refund and would provide for interest to be paid on the refunds at the rate calculated pursuant to Sales and Use Tax Law Section 6907 (currently 5 percent).

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And the fourth, SB 215 (Karnette, Dunn and Lowenthal), which is a companion to this measure, would repeal the provisions imposing the smog impact fee and would transfer \$665 million from the General Fund to the Smog Impact Fee Refund Account in the State Transportation Fund for purposes of making refunds.

COST ESTIMATE:

Enactment of this measure would not impact the Board's administrative costs.

REVENUE ESTIMATE:

The bill contains double-joining provisions with SB 215 (discussed above), which would appropriate \$665 million from the General Fund for purposes of making the refunds required by this measure.

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